

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE FOR THE TWENTIETH  
JUDICIAL DISTRICT AT NASHVILLE

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STATE OF TENNESSEE,  
Petitioner,

v.

U.S. SALES CORP. doing business as  
United States Purchasing Exchange,

a foreign corporation

Respondent.

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**ASSURANCE OF VOLUNTARY COMPLIANCE OR DISCONTINUANCE**

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This Assurance of Voluntary Compliance or Discontinuance ("Assurance") is entered into by the Attorneys General of the States of Alabama, Alaska, Arkansas, Arizona, California, Colorado, Delaware, Florida, Georgia,1,,2,,,3 Nebraska, Nevada, New Hampshire, New Mexico, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyominga4s5, and U. S. Sales Corp. ("Respondent").

U. S. Sales Corp. is a California corporation engaged in, among other things, direct mail sales of merchandise through sweepstakes and other promotions. U. S. Sales Corp.'s corporate headquarters are located at 8550 Balboa Boulevard, Northridge, CA 91325. U. S. Sales Corp. does business under the name of United States Purchasing Exchange or "USPE" and is hereinafter referred to as USPE.

## **STATES' POSITION**

1. The statements contained in this Section represent the position of the States only, and Respondents do not admit the truth of any of the statements contained in this Section.
2. Respondent is a catalog sales company advertising and offering for sale substantially all of its merchandise through direct mail solicitations sent to persons residing in the States. In offering this merchandise for sale, Respondent uses various promotions including but not limited to sweepstakes.
3. Based upon an inquiry made by the States, the States contend that certain advertisements and advertising practices of Respondent are deceptive in that they have the tendency or capacity to mislead consumers as to the likelihood of a consumer's winning a sweepstakes or as to the effect of a purchase on a consumer's likelihood of winning, and unfair in that certain consumers were resolicited by Respondent when Respondent could have ascertained they were confused about the nature of their transactions or were being misled by the advertisements.
4. The States do not contend, as a result of their inquiry or otherwise, that Respondent has failed to award the prizes offered to sweepstakes entrants or failed to properly enter such persons in its sweepstakes.
5. The States' position is that Respondent's conduct as set forth above violates the States' consumer protection statutes set forth in footnote 1 hereof.

## **RESPONDENT'S POSITION**

1. The statements contained in this Section represent the position of the Respondent only, and the States do not admit the truth of any of the statements contained in this Section.
2. Respondent contends that its advertising is and has been lawful and does not violate any consumer protection laws of the States. Respondent further asserts that it has always been its policy that its sweepstakes offers do not convey that purchasers have any advantage over non-purchasers or that a consumer's likelihood of winning a prize is either better than it really is or is enhanced by the making of a purchase.
3. Respondent's position is that it did not violate any state laws with respect to its advertisement and offer for sale of merchandise through direct mail advertisements.

## **GENERAL AGREEMENTS AND PURPOSE OF SETTLEMENT**

1. The parties have agreed to resolve the issues raised during the States' inquiry by entering into this Assurance. Respondent is entering into this Assurance solely for the purposes of settlement and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Respondent expressly

denies, nor is it or may it be construed to constitute a formal complaint or lawsuit containing allegations of violation against Respondent of any applicable contest registration statute or any similar statute in any other State. The purpose of this Assurance is to confirm standards for present and future conduct as to the matters contained herein while avoiding any admission of past non-compliance by Respondent. To the extent that any changes in USPE's business and advertising practices are made to facilitate compliance with this Assurance, such changes shall not constitute any form of evidence or admission, explicit or implicit, by USPE of wrongdoing or failure to comply with any law or regulation. Further, no aspect of this Assurance is intended to be construed as constituting evidence against Respondent in any action brought by any person or entity of any violation of any federal or state statute.

2. The States acknowledge by their execution that this Assurance constitutes a complete settlement of the States' concerns and that the States shall not institute any civil or administrative proceeding or take any civil or administrative action in any forum against Respondent, its affiliates or its shareholders, owners, officers, directors, successors, assigns, contractors, employees, representatives, agents or attorneys under the States' above-cited consumer protection statutes or relating to the subject matter of this Assurance, based upon or arising out of any USPE mailing that was disseminated prior to the Effective Date of this Assurance, and related to USPE's sweepstakes promotions and advertising practices, or any conduct or practice related to such mailings or sweepstakes, except that the States may institute an action or proceeding to enforce the terms and provisions of this Assurance.

## **ASSURANCES**

### **A. Definitions**

The following definitions shall be used in interpreting the terms of this Assurance:

A "**Bonus**" is any good, property, or other item, or any collection of items, that is or are offered for no additional fee to persons making a purchase of other products and that has or have a total value of less than \$10.00. The dollar threshold stated above shall be adjusted upward or downward once at the beginning of each calendar year from the Effective Date of this Assurance based on the percentage change in the Consumer Price Index since the Effective Date of this Assurance.

The "**Buying Won't Help You Win Message**" means the following statement: "Buying Won't Help You Win. Your chances of winning without a purchase are the same as the chances of someone who buys something. It is illegal to give any advantage to buyers in a sweepstakes."

A statement is "**Clear and Conspicuous**" if it is readily understandable and presented in such size, color, contrast, location and audibility, compared to the other matter with which it is presented, that it will be noticed and understood. If such statement modifies, explains, or clarifies other information with which it is presented, it must also be presented in close proximity to the information it modifies and it may not be obscured.

**"Covered Communication"** includes any communication by or on behalf of USPE in any medium that contains an opportunity to enter a sweepstakes or a reference to a sweepstakes or to an opportunity to enter a sweepstakes. Any mailing containing an opportunity or a reference to an opportunity to enter a sweepstakes or a reference to a sweepstakes constitutes a covered communication.

**"Do Not Contact Request"** means a written or oral request that communications not be directed to a person, whether such request is received from the person, the person's spouse or other family member, the person's guardian, attorney or legal representative, or a law enforcement agency.

The **"Enter For Free Message"** means the following statement: "Enter For Free. You don't have to buy anything to enter. Just complete the Free Entry Form below and return it in the enclosed return envelope. You will be entered once in each sweepstakes offered in this mailing." In the context of a covered communication for which a Free Entry Form is not required by this Assurance, the reference to the Free Entry Form may be modified as necessary to refer to the free entry device provided in the communication.

The **"Enter As Often As You Like Message"** means the following statement: "Enter As Often As You Like. You don't have to wait for us to mail you an entry form. You may submit additional entries by mailing a post card or letter with your name and address to: [USPE Address]. Each postcard or letter you mail will be entered once in each sweepstakes offered in our most recent mailing. Each postcard or letter must be mailed separately."

**"Free Entry Device"** means, in the context of a mailed communication, the Free Entry Form specified below and in Exhibit "A". In the context of other communications, it means a device or mechanism that can be used to enter the sweepstakes without purchasing a product.

**"Odds of Winning,"** in a contest in which the chance of winning a particular prize depends upon the number of entries received, such as a random draw sweepstakes, or a pre-selected number sweepstakes in which unclaimed prizes are distributed by means of a random draw, means the phrase "1 in XXX", where XXX equals the quotient of the best estimate, based upon prior experience with the sweepstakes or similar sweepstakes, of the number of entries to be received during the course of the sweepstakes divided by the number of units of the prize to be awarded. In a contest in which the chance of winning a particular prize depends upon the size of the universe of possible winning prize claim numbers or entries, such as a pre-selected number contest in which unclaimed prizes are not awarded, "Odds of Winning" means the phrase "1 in XXX", where XXX equals the quotient of the number of prize claim numbers from which the winning prize claim numbers are selected or the best estimate of the number of entry opportunities to be distributed during the course of the sweepstakes, whichever is larger, divided by the number of units of the prize to be awarded. For purposes of this paragraph each chance to win contained in a communication constitutes a separate entry.

**"Official Rules"** means the formal printed statement, however designated, of the rules for a sweepstakes appearing in a communication. The Official Rules shall be placed in a location in the communication that

may be retained by any person responding to the communication, prominently identified, and all references to them in the communication shall consistently use the designation for the Official Rules that appears in such communication.

A "**Premium**" is any good, property, or other item that (i) is offered for a fee not represented as the item's price and that is only available to persons making a purchase of other products or (ii) is over \$10.00 in value, offered for no additional fee and is only available to persons making a purchase of other products. Premium excludes items offered only as accessories to products purchased or as additional units of the products purchased. The dollar threshold stated above shall be adjusted upward or downward once at the beginning of each calendar year based on the percentage change in the Consumer Price Index since the Effective Date of this Assurance.

"**Preselected Number Sweepstakes**" means a sweepstakes in which the winner is to be determined on the basis of an entry bearing a unique number assigned to the entrant which matches a number selected in advance as the winning number for the sweepstakes.

"**Product**" means any good or other personal property, real property, or other thing offered for sale or lease, but excluding any items being offered as bonuses or premiums.

"**Promptness Sweepstakes**" means a sweepstakes in which the winner is to be determined from among the other entrants in the sweepstakes, in whole or in part, on the basis of the promptness of his or her entry.

"**Purchase**" includes any order of a product or other agreement to buy or lease a product, without regard to whether the order or agreement is accompanied by payment.

"**Random Drawing Sweepstakes**" means a sweepstakes in which the winner is to be determined on the basis of a random selection or selections from among eligible entries at the end of the sweepstakes.

A statement is "**Readily Understandable**" if it is expressed in such common words, phrases or expressions, used in accordance with their common or ordinary usage and meaning, as to be easily understood.

"**Representation**" or "**Represent**" refers to and includes express statements and the implications and inferences that a person might draw from those statements. A representation may be made in writing, orally, by means of graphic symbols or elements, including but not limited to coded stamps, seals and colors, or in any other manner capable of conveying meaning. In determining the express or implied meaning of a representation that appears from the outside of a mailing envelope, only matter visible without opening the envelope will be considered.

"**See Official Rules for Details Message**" means a statement to the effect that additional details are contained in the Official Rules. Any such statement will refer to the Official Rules in terms that are

consistent with the designation of the Official Rules in the communication in which it appears.

**"Sweepstakes"** means any contest, giveaway, drawing, or other enterprise or promotion in which prizes are awarded to entrants by chance or random selection.

**"Sweepstakes Prize"** or **"Prize"** means an item or cash amount awarded in a sweepstakes. It does not include one or more similarly valued items or items or cash amounts of nominal value that are offered to all or substantially all persons receiving or responding to a covered communication.

**"Value"** means fair market value.

The **"You Have Not Yet Won Message"** means the following statement: "You Have Not Yet Won. Our sweepstakes are games of chance. If you enter, your entry will have the same chance to win as every other entry. No one will know who the winner is until after the sweepstakes ends."

## **B. Business Practices**

U.S. Sales Corp. doing business as United States Purchasing Exchange, a/k/a USPE, its officers, shareholders, agents, servants, employees, its successors and assigns, and those persons in active concert or participation with it (collectively "USPE") shall comply with the following terms and conditions:

1A. Unconditional Winner Representations: USPE shall not represent in a covered communication that the recipient has won, is the winner of, or will be the winner of a sweepstakes unless

- (1) the recipient or such recipient's entry has won or will be determined to be the winner,
- (2) the representation is not false, deceptive or misleading, and
- (3) the prize and its value are clearly and conspicuously disclosed in the representation itself, and

(4) any action that the recipient must take to receive or obtain the prize is set forth in readily understandable terms so long as such action does not affect their entitlement to receive or obtain the prize.

1B. Conditional Winner Representations: USPE shall not represent in a covered communication that the recipient may already be or may become a winner, characterize the recipient as a possible winner, or represent that the recipient will, upon the satisfaction of some condition or the occurrence of some event or other contingency, become the winner of a sweepstakes prize unless:

- a. Such representation conveys in readily understandable terms that the recipient has not yet won,
- b. Such representation conveys in readily understandable terms that the winner will not be known until some time in the future, that the conditions necessary to become a winner have not yet been fulfilled, or that it is not yet known whether the conditions have been fulfilled,
- c. Such representation contains within it all material conditions needed to make it truthful and not misleading, including but not limited to the conditions that must be satisfied in order for the recipient to be determined as the winner. All such conditions must be
  - 1. stated in readily understandable terms,
  - 2. presented in such a manner that they are an integral part of the representation and not separated from the remainder of the representation by intervening words, graphics or colors or blank space in excess of a single horizontal space or the vertical distance between two lines which are single spaced,
  - 3. made in terms, syntax, and grammar that are as simple and easy to understand as those used in the representation, and
  - 4. presented in such a manner that they appear in not less than 100% of the type size and in the same typeface, color, style, and font as the remainder of the representation.

A general representation, such as that an entry is necessary to win, that is clearly applicable to all recipients of the communication, and not to the recipient personally, is not subject to the requirements of this subparagraph.

- d. Neither such representation nor any conditional phrases, terms, or statements necessary to make it truthful uses the present or past tense in referring to the recipient as a winner or possible winner, or otherwise represents that the recipient is presently a winner or has already won.
- e. Such representation does not represent that the recipient has already won, is a winner, definitely will win in the future, or has a greater likelihood of being declared the winner than he or she actually has.
- f. Such representation is not presented in such a way as to cause a likelihood of confusion or misunderstanding as to the recipient's status as a winner or possible winner.

2. Representation of Prize and Related Terms. USPE shall not, in a covered communication in which it offers one or more similarly valued items or items of nominal value to all or substantially all recipients of the communication:

- a. represent that such items are prizes or awards or are otherwise distributed by chance,
- b. use terms such as sweepstakes, contest, or drawing to describe the process by which such items will be distributed or otherwise represent that such process involves a distribution by chance, or
- c. use the terms winner, luck, lucky, congratulations, or other similar terms indicating good fortune to describe the recipient of the items or otherwise represent that the recipient has a special status in the distribution.

3. Representations of Winner Characteristics. USPE shall not represent in a covered communication that

- (1) the recipient of the communication shares a particular characteristic with a past sweepstakes winner or with the person who will be the winner of the sweepstakes referenced by the communication, or
- (2) the communication shares a particular characteristic with a communication received by a past sweepstakes winner or with the communication that will be received by the person who will be the winner of the sweepstakes referenced by the communication; where the referenced characteristic suggests that the recipient or the entry opportunity offered has an enhanced or better likelihood of winning the sweepstakes than other entrants or entry opportunities offered, except that, subject to the other terms of this Assurance, USPE may represent that, like a communication received by a past sweepstakes winner or that will be received by the person who will be the winner of the sweepstakes, the communication received by the recipient includes an opportunity to enter a sweepstakes.

4. Representations of Chance of Winning. USPE shall not misrepresent in a covered communication the likelihood of winning a prize. When any representation is made concerning the likelihood of winning that is true only with regard to some prizes but not others, the prize(s) to which the representation applies, and its value, shall be clearly and conspicuously identified, within the representation. General representations that it is possible to win do not constitute representations of likelihood of winning.

5. Requests for Information or Action. USPE shall not request in a covered communication information or action from the recipient that would be of use or is represented as being of use in the event the person has won a sweepstakes prize, unless the person has won a sweepstakes prize and such information or action is necessary to deliver the prize.



Examples of prohibited requests include but are not limited to:

- a. a request for information concerning a person's whereabouts at the time the prize is to be awarded;
- b. a request for information concerning a person's preferences regarding characteristics of the prize to be awarded, such as the method of payment or the color of a vehicle;
- c. a request for information concerning a person's preferences for events relating to the awarding of a sweepstakes prize; or
- d. a request for a person to execute a document or agreement, such as a release or publicity document, that concerns legal issues arising out of or related to the awarding of a sweepstakes prize.

Notwithstanding the above, USPE may request completion of bona fide marketing surveys or provision of other information relating to consumer opinions of USPE's merchandise and promotions so long as (a) the information sought does not relate to the sweepstakes or prizes referenced in the covered communications unless USPE clearly and conspicuously discloses in connection with the request that the information is being sought for developing future USPE sweepstakes and such is the case, (b) such requests for information clearly and conspicuously disclose (i) that the information is sought for research purposes and (ii) the You Have Not Yet Won message, and (c) the information requested is used by USPE for the purposes represented, (d) USPE does not represent the information is sought for any purpose other than marketing purposes, and (e) such requests otherwise comply with the terms of this Assurance.

6. Representations of Advantage over Other Entrants. USPE shall not represent in a covered communication that sweepstakes prizes will be awarded in a non-random manner or that any person has or will have any advantage over other entrants in a sweepstakes.

7. Use of Simulated Checks and Similar Devices. USPE shall not use in a covered communication a personalized simulated check or other personalized payment device, such as a depiction of a deposit slip or electronic funds transfer receipt, to represent any sweepstakes prize that the recipient has not already been selected to receive.

8. Use of Devices Appearing to Involve Chance. USPE shall not use in a covered communication any device appearing to involve chance to convey information relating to a person's eligibility for or status in a sweepstakes that is the same or substantially the same information or status conveyed to substantially all persons receiving the device. Devices including, but not limited to, scratch cards, game pieces, sealed inserts and other devices that appear to offer information that is unique to the recipient or different from information provided to other recipients of the communication, when such is not the case, are devices that appear to involve chance.

9. Use of Devices to Represent Membership in Select Group. USPE shall not represent in a covered communication that certain prizes, or entry into certain sweepstakes, is only available to persons possessing a particular scratch card, game piece or other device contained in a communication unless that is the case.

10. Representations of Enhanced Status or of Membership in Select Group. USPE shall not represent in a covered communication that a person or sweepstakes entry has a status in a sweepstakes that is superior to the status of other persons or sweepstakes entries, that a person or sweepstakes entry is a member or part of a select group, or that a person's status or sweepstakes entry's status in the sweepstakes has improved. Such representations include, but are not limited to, representations

(a) that other persons have not received the same communications or have not been entered in the sweepstakes,

(b) that other entrants have been disqualified or eliminated from further participation in the sweepstakes, or that the pool of entrants has been reduced,

(c) that the recipient is now closer to winning the sweepstakes than ever before,

(d) that the recipient is a finalist or is tied with other sweepstakes entrants, or

(e) that the recipient is in the final round or stage of the sweepstakes; except that, subject to the other provisions in this Assurance, USPE may represent, if true, that the recipient has been entered in the sweepstakes, is eligible to enter the sweepstakes, or has won the sweepstakes. Representations relating only to the possible future status of the recipient or to subsequent events that will occur in the sweepstakes, so long as they do not represent the recipient's current status or position, are not prohibited by this Paragraph.

11. Representation of Personal Feelings, Relationships or Actions. USPE shall not misrepresent in a covered communication, through dramatization or otherwise, that its employees or others acting on its behalf, real or fictitious, have personal feelings concerning or a personal relationship specifically with the recipient of the communication in connection with a sweepstakes including, but not limited to, representations that (a) they have a shared interest in the recipient's winning the sweepstakes, (b) they have any belief or feeling relating specifically to the recipient in connection with a sweepstakes, such as an opinion that the recipient deserves to win, or (c) they will take or refrain from taking any action relating specifically to the recipient relating to a sweepstakes.

12. Representations Relating to Delivery of Communication. USPE shall not represent that a covered communication is being delivered by any method other than bulk mail, or from any source other than USPE, unless that is the case, such as by:

- a. representing that delivery is monitored or urgent, being made by courier, express, overnight or hand delivery, or by registered or certified mail; or
- b. using stamps, labels, symbols, bar codes or other elements which resemble indicia or forms used by an entity such as the United States Postal Service, a government agency, a private courier or delivery service unless the element is genuine and required by such other entity.

Statements not related to the delivery or the method of the delivery of the communication, such as references to the importance of the contents or the urgency of the contents of the communication, are not covered by this paragraph.

13. References to Regulations. USPE shall not make reference to any law or regulation pertaining to the use of the mail or to the operation of a sweepstakes which appears from the outside of an envelope in which a covered communication delivered by mail is contained, unless such statement and such placement are required by law.

14. Exclusive Method of Entry. The exclusive method of entry in a sweepstakes provided to recipients of a covered communication shall be a free entry device. USPE shall not combine a free entry device with any order form or other purchase device in a covered communication. USPE shall not automatically give entry in a sweepstakes to persons who order or purchase a product. There shall be no reference on a free entry device to whether a person has ordered a product and no reference on an order device to whether a person has entered a sweepstakes. Nothing herein prohibits USPE from requesting elsewhere in the communication that an order, if any, be returned in the same envelope subject to all of the terms of this Assurance.

15. Sweepstakes Facts. USPE shall include in all covered communications containing sweepstakes entry opportunities and all personalized covered communications the "Sweepstakes Facts" disclosure in accordance with the requirements of this paragraph. For purposes of illustration, an example Sweepstakes Facts insert attached hereto as Exhibit "A" and is incorporated herein as if fully set out. The Sweepstakes Facts disclosure shall consist of a box containing prize data (hereinafter the "box") and the Sweepstakes Facts Messages.

A. The box shall appear as follows and contain the following matter and no other:

- i. A heading entitled "Sweepstakes Facts" in at least 24-point type, which shall appear above a box as depicted in Exhibit "A."

ii. The box, as depicted in Exhibit "A," shall contain an odds statement which shall set forth the following information in a grid format containing the

following columns:

- a. a column identifying all major prizes (including at least the prize of greatest value for each sweepstakes into which entry is offered or referenced in the communication) and any other prize specifically identified in the communication,
- b. a column identifying, if not identical to the identification of the prize, the prize's value and the quantity offered,
- c. a column stating the numerical odds of winning the prize on a 1 in "n" ratio, and
- d. a column stating the termination date of the sweepstakes in which the prize will be awarded.

iii. In addition to the above information, USPE may also include the name or identifying number of any sweepstakes into which entry is offered, as well as the winner selection method presented in separate columns so long as the information contained within each column in the box remains clearly distinct and can be easily read.

iv. All information contained within the box shall be presented in a clear and conspicuous manner and shall be in at least 12-point type.

B. Below the Sweepstakes Facts box shall appear the following four (4) Sweepstakes

Facts Messages, each presented as its own paragraph separate from the other paragraphs and set in at least 12-point type, except for the first sentence of each paragraph, shall be set in 14-point bold type so as to contrast with the remainder of the message:

i. The You Have Not Yet Won Message,

ii. The Enter For Free Message,

iii. The Enter As Often As You Like Message, and

iv. The Buying Won't Help You Win Message.

C. A dotted line shall be placed below the last of the four listed Sweepstakes Facts Messages and labeled

"Detach Before Mailing" in at least 8-point type. Below the dotted line, no smaller than six (6) inches by four (4) inches, shall be the entry device required by Paragraph 14 of this Assurance. The front side of the entry device shall either be pre-printed with the name and address of the recipient of the communication, or shall provide space and instructions for the recipient to provide their name and address. On the front side of the entry device shall appear the statement in at least 14-point type: "Sweepstakes Entry Form", centered horizontally and no closer than 1 inch from the top edge of the entry device, followed by the following three statements set in at least 12-point type and centered horizontally:

- i. "Return this Form to Enter All of the Sweepstakes Offered",
- ii. "No Purchase Necessary to Enter our Sweepstakes", and
- iii. "Buying Won't Help You Win."

The entry device may contain a bar code and/or other similar markings to assist USPE in processing it but no other matter. The entry device may also request that a date of receipt and of return be provided in a designated location.

D. In all such covered communications delivered by mail, the Sweepstakes Facts shall appear on a white, freestanding insert. The Sweepstakes Facts shall contain all of the information and shall be set forth in the manner described by Paragraph 15(A) through 15(C) above. The Sweepstakes Facts disclosure shall appear in substantially the form of the example Sweepstakes Facts insert attached hereto as Exhibit "A" and which is incorporated herein as if fully set out. The Sweepstakes Facts insert shall be no less than six (6) inches wide and long enough to contain the matter required below. The insert may be folded horizontally if necessary, but only if it is folded no more than is necessary to fit within the envelope in which it is mailed and in such a manner that the front of the Free Entry Form is visible on the outside of the folded insert.

E. In such covered communications (i) that are not personalized and only appear in print media, (ii) that are not themselves personalized and are mailed by a third party to the recipient, or (iii) that are not personalized and do not offer for sale any product, the Sweepstakes Facts may be modified so that the information described in Paragraph 15A and 15B is presented in a clear and conspicuous manner and a box presentation for the information required by Paragraph 15A is used, but the specific font and spacing requirements do not apply to any of the required disclosures.

F. In any such covered communications that do not offer any entry opportunity, the Sweepstakes Entry Form described in Paragraph 15(C) need

not be included in the Sweepstakes Facts disclosure described by this Paragraph.

16. Disclosures in Rules. USPE shall clearly and conspicuously disclose in all covered communications the Official Rules that apply to each sweepstakes offered.

A. The Official Rules shall contain the following four (4) Sweepstakes Facts Messages:

- i. The You Have Not Yet Won Message.
- ii. The Enter For Free Message.
- iii. The Enter As Often As You Like Message.
- iv. The Buying Won't Help You Win Message.

The messages shall, in addition to being clear and conspicuous, each be set out in separate paragraphs and the first sentence of each message will be printed in a contrasting typeface at least as large as the largest typeface otherwise used in the text of the Official Rules.

B. In the event Official Rules for multiple sweepstakes are combined in a single document, USPE may set forth the above Messages only once provided it does so in the following manner:

i. The four (4) messages shall be set forth in the top third of the front of the document containing the Official Rules and will be clearly distinct from any other matter and separated by at least 1/4 inch of clear space from any other matter.

ii. The portion of the document containing the messages shall contain no matter other than matter required by this paragraph and will not be overlaid with any graphic design, text or color from outside the box.

iii. The four (4) messages shall be presented in separate paragraphs and set in at least 10-point type, except for the first sentence of each paragraph, which shall be set in at least 12-point bold type so as to contrast with the remainder of the message. The content of the messages shall be clearly distinct from the background and easily read.

C. The Official Rules shall each contain the Sweepstakes Facts box presenting the information required by Paragraph 15(A) pertaining to the prizes offered by the particular sweepstakes, which shall be printed in a type size that is at least as prominent as that contained in the Official Rules and shall otherwise be presented in the manner described Paragraph 15(A). The Sweepstakes Facts shall appear in a box that will be clearly distinct from any other matter and separated by at least 1/4 inch of clear space from any other

matter. The box shall contain no matter other than matter required by this paragraph or paragraph 15 and will not be overlaid with any graphic design, text or color from outside the box except the Messages required by Paragraph 16(A) may also be presented in the same box. The background of any box appearing in the Official Rules will be in a color or shade that contrasts with that of the surrounding area and which contrasts with the text in the box in such a manner that the text is clearly distinct from the background and easily read.

D. In the event the Official Rules for multiple sweepstakes are set forth on a single document, USPE may also combine the information required by Paragraph 16(C) in a single Sweepstakes Facts information for those sweepstakes in a single boxed disclosure by presenting the Sweepstakes Facts information as follows:

- i. The box containing the Sweepstakes Facts shall appear in the upper half of the front of the first page of the document and will be clearly distinct from any other matter and separated by at least 1/4 inch of clear space from any other matter.
- ii. The portion of the document containing the combined Sweepstakes Facts shall contain no other matter other than matter required by this paragraph and will not be overlaid with any graphic design, text or color from outside the box.
- iii. The prize details required by Paragraphs 15(A) shall be set out in type at least as prominent as that contained in the sweepstakes rules, and
- iv. The combined Sweepstakes Facts box shall otherwise comply with the requirements of this paragraph and paragraphs 15(A) and 15(B).

17. Disclosures on Order Device. USPE shall clearly and conspicuously disclose on the face of any order device contained within a covered communication the Buying Won't Help You Win Message and instructions as to how persons may enter any sweepstakes offered without making a purchase.

18. Internet Disclosures. USPE shall clearly and conspicuously disclose in covered communications delivered via the Internet, in close proximity to each entry device, all of the disclosures required in paragraphs 13(a)-(c) above and shall clearly and conspicuously refer the recipient of the communication to the official rules. The provisions of such disclosures pertaining to the method of entry shall be modified to be consistent with the methods of entry permitted under the official rules of the sweepstakes offered in the communication. In the context of a web page, such disclosures shall be arranged substantially as set out in 12(a)-(c) above and placed immediately above each entry device and the reference to the official rules shall be a hyperlink to a web page containing the official rules and no other matter.

19. High Activity Customer Contacts. USPE shall mail on or before the last day of each month, by first class mail in a plain white business envelope, the letter attached hereto as Exhibit "B" to each person who made twelve (12) or more purchases, or spent more than \$467.52, in response to covered communications distributed in the twelve month period ending on the last day of the preceding month. The first twelve month period shall begin on the Effective Date of this Assurance; purchases made in response to covered communications distributed prior to the Effective Date of this Assurance shall not be counted under this Paragraph. The dollar threshold stated above shall be adjusted upward or downward once at the beginning of each calendar year based on the percentage change in the Consumer Price Index since the Effective Date of this Assurance. USPE shall maintain a list of all persons to whom such letters are mailed, the date each letter was mailed, and the total amount of purchases made by each person during the twelve month period ending on the last day of the preceding month. USPE shall maintain this list for a period of not less than five (5) years and shall, at its own expense, provide a copy of the list to a State within ten (10) days of receiving the State's written request.

20. Limitation on Use of Covered Communications. After a person has made twenty-five (25) purchases or has spent more than \$935.04, in response to covered communications distributed in a twelve (12) month period, USPE shall not mail or otherwise make a covered communication to such person starting six (6) weeks after such twelve (12) month period ends. Once USPE has determined that a person is not to receive a covered communication, USPE shall not thereafter send such communications to such persons. The first twelve month period shall begin on the Effective Date of this Assurance; purchases made in response to covered communications distributed prior to the Effective Date of this Assurance shall not be counted under this Paragraph. The dollar threshold stated above shall be adjusted upward or downward once at the beginning of each calendar year based on the percentage change in the Consumer Price Index since the Effective Date of this Assurance. However, USPE shall, as of the Implementation Date of this Assurance, ensure that all persons who have spent \$2,500.00 or more during the twelve (12) months preceding the Effective Date of this Assurance are not sent any covered communications.

21. Treatment of Sweepstakes Entries. USPE shall not give any advantage to entries to a sweepstakes accompanied by a purchase and shall not cause any disadvantage to an entry not accompanied by a purchase.

22. Representations related to Eligibility for Additional Prizes or Advantages in Selection Process. USPE shall not represent in a covered communication that (a) an entry in a sweepstakes accompanied by a purchase will be eligible to receive additional prizes or more likely to win than an entry not accompanied by a purchase, or that an entry in a sweepstakes accompanied by a purchase will be given any advantage over an entry not accompanied by a purchase, or (b) an entry not accompanied by a purchase will receive fewer prizes or be less likely to win than an entry accompanied by a purchase, or an entry not accompanied by a purchase will be subjected to any disability or disadvantage to which an entry accompanied by a purchase would not be subjected.

23. Requests for Information not Related to Purchase. USPE shall not request in a covered communication action, information or the return of a document from a person who purchases a product



that is not also requested of a person who does not purchase a product unless the action, information or document is necessary to process or is otherwise related to the product purchase. Nothing herein shall prevent USPE from requesting other information through bona fide marketing surveys so long as such requests for information comply with the terms of this Assurance.

24. Representations Relating to Customer History or Status. USPE shall not represent in a covered communication that a purchase or a person's purchase history has resulted in or will result in any special, different or enhanced status in a sweepstakes or with USPE in a manner relating to a sweepstakes.

25. Representations Relating to Membership In Group Based on Purchase. USPE shall not represent in a covered communication that a person has a particular status or is in a particular category or group, such as by using terms such as "AAA Customer," President's Club, Gold Club, Platinum Club, or Millionaires Club, if such status or membership in such category or group is represented as being based in whole or in part upon the person's purchase history.

26. Representations Relating to Receipt of Additional Sweepstakes Opportunities. USPE shall not represent in a covered communication that persons who purchase products will receive or be more likely to receive future communications containing sweepstakes entry opportunities or that a sweepstakes entry opportunity was received because the recipient purchased products in the past. USPE shall not represent that persons who fail to purchase products will not receive or be less likely to receive future sweepstakes entry opportunities, or that a sweepstakes entry opportunity was not received because the recipient failed to purchase products in the past.

27. Customer-Only Sweepstakes. USPE shall not offer any opportunity to enter a sweepstakes that appears to be available only to persons who have previously purchased products or that tend to create the impression that future sweepstakes opportunities will be available only to customers.

28. Identification of Premiums and Bonuses. USPE shall not offer in any covered communication any premium, unless the offer clearly and conspicuously identifies the premium and states its value. USPE shall not offer in any covered communication any bonus, unless the offer clearly and conspicuously describes the nature of the bonus and states its maximum value. USPE shall not misrepresent the nature or value of any premium or bonus.

29. Representations of Chance in Offer of Premiums or Bonuses. USPE shall not offer in any covered communication any premium or bonus, if there is or is represented to be any element of chance involved in the selection of the premium or bonus. Chance appears to be involved in the selection if

(1) the offer references any premiums or bonuses for which a purchase of some designated amount does not ensure receipt,

(2) the conditions for receiving each premium or bonus offered are not clearly and conspicuously disclosed, or

(3) the identity of the premium or bonus for which the recipient is eligible is not clearly and conspicuously disclosed.

30. Offers of Premiums and Bonuses in Non-Covered Communications. When offering a premium or bonus in a non-covered communication, USPE shall clearly and conspicuously and unambiguously disclose the identity of the premium or bonus the recipient may receive, provided that the foregoing shall not prohibit "mystery" or "grab bag" premiums or bonuses, or other similar promotions in which no representation as to the specific identity of the premium or bonus is made.

31. Contest Deadlines. USPE shall not represent that any deadline applies to the return of an entry in a sweepstakes other than the date by which all entries must be received for the prize offered. Nothing herein shall prevent USPE from making general requests for prompt responses that do not specify any particular deadlines.

32. Representations Relating to Deadlines. USPE shall not misrepresent or make statements inconsistent with the deadline for entries or any action regarding an entry in a sweepstakes, the consequences of taking or failing to take action, or the need for promptness in responding to an offer of a sweepstakes entry opportunity. Nothing herein shall prevent USPE from making general requests for prompt responses that do not specify any particular deadlines.

33. Disclosures Relating to Deadlines. USPE shall not represent in a covered communication that entries must be returned or other action must be taken by a certain deadline, if that deadline is different from a deadline for another sweepstakes prize offered in the communication, unless the representation identifies, in a readily understandable manner and as clearly and conspicuously as the rest of the representation of the deadline, the sweepstakes prize to which the deadline applies.

34. Instant Win Offers. USPE shall not represent in a covered communication any sweepstakes as an "instant win" contest or that a winner will be determined immediately unless the contest is a pre-selected number contest, the matching of entries is performed as the entries are received by USPE, and any winner is announced within ten (10) days of the determination. In the event all pre-selected winning entries are received, then either the sweepstakes shall end or additional winning entries shall be selected so that, at all times, an opportunity to win is available.

35. "Do Not Contact" Requests. USPE shall include a clear and conspicuous notice in all personalized covered communications that USPE will accept "do not contact" requests either by a call to a toll free number identified in the notice or by mail to an address identified in the notice, or, if a communication is made through the Internet, via its web site. USPE shall accept "do not contact" requests, whether sent directly or indirectly, from the persons who are the subject of such requests, as well as from guardians, conservators, family members, legal representatives or law enforcement agencies who are acting on behalf of such persons. USPE shall, upon receipt of any request, use reasonable diligence to remove the person's name and address and, in so doing, shall interpret a submitted physical address as including all reasonable variations of that address that would result in a covered communication being delivered to the

physical location and addressee specified by the submitted address. USPE shall not accept any purchases in response to covered communications from persons on its "Do Not Contact" List. USPE shall further ensure that such names and addresses are removed from all lists made available by USPE for sale or rental to others. USPE shall retain, during the period of time in which it is required to provide compliance reports to the States, records of the number of persons from whom or on whose behalf it has received the requests and shall, through random auditing of its removal efforts, confirm the effectiveness of the removal process, and report the findings of such audits in its compliance reports. Such records shall be made available upon the request of a State. In addition to complying with the other terms of this paragraph, USPE shall offer to refund all payments, made in response to covered communications, that are received between the date upon which it receives the "do not contact" request and the date by which it has effectively removed the subject from its lists and ceased all mailings to such person.

36. Refund Policy and Related Disclosures in Covered Communications. USPE shall not offer any product in a covered communication unless USPE clearly and conspicuously discloses the refund policy applicable to such product either in close proximity to any product offer in the covered communication or on the order form. In the event that the products offered in a covered communication are displayed in a multi-page brochure or catalog, USPE shall clearly and conspicuously disclose its policy in a prominent, regular location, such as on the inside of the front cover page. In addition to the above, USPE shall provide a clear and conspicuous disclosure of its refund policy with any product delivered. USPE's refund policy shall, at a minimum, require USPE to provide a full refund of the amount paid, including related shipping and handling charges, if the customer returns the product in unused condition and the stated refund period.

37. Inclusion of Additional Fees in Order Forms. USPE shall not pre-print in any payment column, line or space on any order device provided with covered communications, any fee or cost that is not required to be paid by persons choosing to purchase merchandise in response to the communication, such as a fee for an optional premium or for additional delivery services.

38. Pre-selected Number Sweepstakes: Disclosures. USPE shall clearly and conspicuously explain in covered communications that include an entry for a Preselected Number Sweepstakes (other than any Preselected Number Sweepstakes which, under the Official Rules by which it is governed, terminates within 6 months of the return of the preselected number ("Early Termination Sweepstakes")), when such is the case, (a) that the Preselected Number Sweepstakes is ongoing, (b) that there are likely to be multiple entry opportunities for that Sweepstakes, and (c) that the winning number may have already been returned. In cases other than Early Termination Sweepstakes in which the preselected number character of the promotional sweepstakes is prominently promoted in such solicitation materials, the explanation shall be in close proximity to the most prominent identification of the largest prize to be awarded in the Preselected Number Sweepstakes. In all other cases, the explanation shall be in the Official Rules with a See Official Rules for Details Message in close proximity to the most prominent identification of the largest prize to be awarded in the Preselected Number Sweepstakes.

39. Promptness Sweepstakes - Disclosures. USPE shall clearly and conspicuously explain in a covered

communication offering a Promptness Sweepstakes the basis upon which the winner of the Promptness Sweepstakes will be determined.

40. Pre-selected Number Sweepstakes - Winner Selection. For every Preselected Number Sweepstakes included in a covered communication, USPE shall ensure that the preselected winning number is within the range of numbers actually mailed by USPE for that sweepstakes (or, if it happens that the preselected winning number is not, for any reason, within that range of numbers, to designate as the winning number a preselected alternate number that is within such mailed range), and if the winning preselected number is not returned at the end of the sweepstakes, award the prizes offered in a random drawing from among other eligible entrants in accordance with terms upon which it was offered to the winning entrant.

41. Determination of Odds. USPE shall in good faith and based upon its experience estimate the odds of winning any sweepstakes it promotes and will not distribute a total number of entry opportunities in a sweepstakes that, based on that estimate, would be expected to result in receipt of entries in excess of the number used to calculate those odds. USPE shall make a good faith effort to not decrease the probability of winning a sweepstakes from the odds disclosed in the first covered communication in which the sweepstakes was offered.

42. Consumer Complaint Handling. USPE shall promptly respond to consumer complaints concerning billing, billing statements and/or collection notices. USPE shall establish a state liaison whose responsibility shall be to resolve customer issues referred by state law enforcement agencies.

43. List Rental. USPE shall not sell, market, rent or otherwise distribute any list containing the names of persons identified by Paragraph 20 to third parties for telemarketing solicitations or sweepstakes solicitations. USPE shall not represent that it makes any effort to "screen" or otherwise ensure that the third parties to whom it sells, markets, rents or otherwise distributes its customer lists have good reputations.

44. Representations Relating to Assurance. USPE shall not make any representation in a covered communication which misrepresents, contradicts, is inconsistent with, or causes a likelihood of confusion or misunderstanding concerning any statement or disclosure required to be made under this Assurance or any other statement in the communication.

45. Representations of Approval, Etc. USPE shall not represent in a covered communication that its representations, solicitations, practices, goods or services have the sponsorship or approval of any Court or the Attorney General of any State or any other judicial or governmental authority unless expressly authorized or required by such authority.

46. Compliance with Other Laws.<sup>6</sup> Moreover, nothing in this Assurance shall be construed to deprive any consumer or other person or entity of any right under the law.

### **C. Agreement to Establish Fund for Customer Repayments and**

## Agreement to Repay States

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1. Respondent agrees to pay, within One Hundred Eighty (180) calendar days after the execution date of this Assurance, the sum of Thirty<sup>7</sup>. Notwithstanding the purpose of the reimbursement amount as specified in the immediately preceding sentence, subject to their respective state laws and policies, the States may use such reimbursement amount for any purpose provided by state law, including for placement in or application to, a consumer education, litigation or local consumer aid fund or revolving fund, or for other uses to defray the costs of the inquiry leading to this Assurance, as permitted by the laws of the State. In addition to the above payments to the Fund and to the States, USPE shall pay up to Three Million Six Hundred Thousand Dollars (\$3,600,000.00) towards the costs of administering the repayment program.

2. All payments made by USPE shall be made payable in accordance with the written directions provided to Respondent by the States of Missouri, in consultation with the States of California, Washington, Arizona, and Indiana and the District of Columbia (the "Executive Committee"), and shall be due as follows:

a) Upon the Effective Date, USPE shall (1) cause to be deposited into a Fund as directed in writing by the Executive Committee the sum of Nine Million Dollars (\$9,000,000.00), and (2) pay directly to the States their respective portion of the One Million Four Hundred Twenty Thousand Dollars (\$1,420,000.00 as directed in writing by the Executive Committee.

b) Within One Hundred Eighty (180) days [9/20/00] days of the Effective Date of this Assurance, USPE shall cause to be deposited into the Fund the sum of Twenty-One Million Four Hundred Thousand Dollars (\$21,400,000.00).

c) Within Thirty days of receipt of a written request by the Executive Committee and /or a bill from the Administrator, USPE shall pay the administrative costs set forth therein or incurred thereby in accordance with the written instructions of the Executive Committee unless and until USPE has paid for such purposes Three Million Six Hundred Thousand Dollars (\$3,600,000.00). All such payments shall be deposited into the Fund.

In the event the Respondent is or becomes subject to a court order attempting to prohibit or restrict such payments, Respondent shall immediately advise the States of such order. Respondent shall also immediately advise the States if it receives notice that any motion for such an order has been filed. Respondent's failure to comply with the above payment schedule shall not be deemed a breach of this

agreement if Respondent is subject to a court order (other than an order to which Respondent has consented), by a court having jurisdiction over Respondent, that enjoins the Respondent from complying with the payment schedule, although the debt remains due. The monies in the Fund account shall be delivered to the Administrator following its selection by the Executive Committee.

**i. Establishment of Fund Administrated by Attorneys General**

(1) The Fund shall be established under the oversight and direction of the Executive Committee for the purpose of providing for the residents of the States repayment of monies paid to USPE and to also pay the administrative costs associated with providing such repayments, including the costs incurred by an administrator and the individual states as follows:

(a) The Executive Committee shall select a third party Administrator ("Administrator") to administer and distribute the Fund on behalf of the States.

(b) Residents in the States, or their legal representatives as identified by the Administrator, who paid to Respondent more than \$1,870.00 in any calendar year since and including 1997 shall be eligible for a full or partial repayment from the Fund of the amount paid in each year their payments exceeded such amount in accordance with the guidelines established by the Executive Committee. The States will endeavor under the guidelines to use the entire fund for repayment to such customers.

(c) The costs of administering and distributing the Fund, including, but not limited to, the costs of notifying consumers eligible for repayment and of processing all repayments, shall be paid from the Fund subject to the authorization of the Executive Committee. Respondent shall reimburse the Fund as directed by Executive Committee unless and until Respondent has paid Three Million Six Hundred Thousand Dollars (\$3,600,000.00) towards such costs.

(d) Respondent shall identify, based on its business records, the names and addresses of all customers in the States who paid to USPE at least \$1,870.00 in at least one of the calendar years 1997, 1998 or 1999. With respect to those customers, Respondent shall also identify the total amount paid by each consumer in the year or years in which the consumer's payments to Respondent exceeded \$1,870.00, and note any repayments already made by Respondent to such persons. This information shall be provided electronically in a manner acceptable to the Executive Committee within sixty days of the Effective Date of this Assurance and shall also be made available, upon written request, to any of the States.

(e) In the event all of the monies in the Fund are not paid to consumers eligible for repayment under the repayment program, or paid for their benefit to the respective State's Unclaimed Property Funds, and are not paid as administrative expense to the administrator or to the States for costs incurred in implementing the repayment program, the remaining sum shall be divided by the States in proportion to their population and may then be used by the individual States for attorneys' fees or investigative costs, or for purposes of consumer education, litigation, public protection or local consumer aid funds or for any other purpose authorized by state law at the discretion of each state's Attorney General.

(f) The parties acknowledge that, (i) the establishment of the Fund is hereby approved by the Attorneys General of the States, and shall be subject to their continuing jurisdiction as specified in this Assurance, (ii) neither USPE nor any related party shall be entitled to a return of any monies deposited to the Fund, (iii) any taxes on the income of the Fund shall be paid from the Fund's assets, (iv) the repayment Administrator shall be directed to comply with any information reporting any withholding requirements applicable to the Fund, (v) nothing in this Assurance shall be construed as prohibiting payments made to USPE customers out of the fund from being credited against other claims of such customers, and (vi) if any interest is earned by the Fund, it shall be used in accordance with the above restrictions and purposes of the Fund.

## **ii. Reimbursement of Attorneys General for Costs**

With regard to the payments for reimbursement, described in Section C.1. above, of litigation costs, attorneys fees, investigative costs and consumer education, litigation, public protection and local consumer aid funds, USPE shall pay the States as directed in writing by the Executive Committee. Such checks shall be made payable to such accounts and addresses as the Attorneys General shall direct and shall be due and payable upon the Effective Date of this Assurance.

## **iii. No Penalty**

No portion of the above funds represents or is paid as a settlement of a penalty or fine of any kind against USPE or any other person or entity.

## **D. Compliance Efforts and Reports**

1. Respondent shall institute supervisory compliance procedures which are reasonably designed to insure compliance with this Assurance, including, without limitations, the training of relevant employees, revisions to and/or development of appropriate training materials and the development and implementation of internal procedures, including periodic monitoring to ensure compliance with the terms of this Assurance.

2. Respondent shall provide a copy of this Assurance to all those officers and employees of Respondent who may have managerial responsibility for developing, conducting or authorizing advertising promotions and promotional programs and to any third parties who may have such managerial responsibility and are not supervised by those officers and employees of Respondent.

3. USPE will file with each of the States serving on the Executive Committee three written reports, each signed by an officer or officer with knowledge of USPE's obligations under this Assurance, as to USPE's compliance with the terms and provisions hereof, the first to be filed six (6) months after the Effective Date of this Assurance, and the second and third at six-month intervals thereafter.

## **GENERAL PROVISIONS**

1. This Assurance shall be governed by the laws of the States.
2. Nothing in this Assurance shall be construed to authorize or require any action by Respondent in violation of applicable federal, state or other laws. Respondent agrees that this Assurance constitutes a legally enforceable obligation of Respondent in accordance with its terms.
3. This Assurance does not constitute an approval by the States of any of Respondent's programs or practices and Respondent shall not make any representation to the contrary.
4. The respective Attorneys General, without further notice, may make *ex parte* application to any appropriate state court for an order approving this Assurance, which shall be considered an Assurance of Voluntary Compliance or an Assurance of Discontinuance as provided by the States' respective laws, or otherwise file this Assurance in any appropriate state court.
5. This Assurance applies to Respondent, U.S. Sales Corp., doing business as United States Purchasing Exchange, a/k/a USPE, its officers, shareholders, agents, servants, employees, its successors and assigns, and those persons in active concert or participation with it.
6. This Assurance may be executed in counterparts.
7. The "Effective Date" of this Assurance shall be Wednesday, April 5, 2000.
8. The "Implementation Date" of this Assurance, by which time USPE shall be in compliance with the above terms, shall be 90 days from the Effective Date unless otherwise stated within this Assurance.
9. Nothing in this Assurance shall be construed as a waiver of any private rights of any person.
10. This Assurance constitutes the entire agreement of the parties hereto and supersedes all prior agreements or understandings, whether written or oral, between the parties and/or their respective counsel with respect to the subject matter hereof. Any amendment or modification to this Assurance must be in writing and signed by duly authorized representatives of all the parties hereto.
- 11 The undersigned representative for each party certifies that he/she is fully authorized by the party he/she represents to enter into the terms and conditions of this Assurance and to legally bind the party he/she represents to the Assurance.

## **SIGNATURES**

We the undersigned, who have the authority to consent and sign on behalf of the parties in this matter,



hereby consent to the form and contents of the foregoing Assurance and to its entry.